IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3347 of 2002
with
CIVIL APPLICATION NO 1551 OF 2003
and
CIVIL APPLICATION NO 6116 OF 2003
IN
SPECIAL CIVIL APPLICATION NO 3347 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AI MULTANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3347 of 2002

MR NK MAJMUDAR for Petitioner No. 1

Mr. ND Gohil, AGP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/08/2003

ORAL JUDGEMENT

Heard learned advocate Mr. NK Majmudar for the petitioner and Mr. ND Gohil, learned AGP for the respondents. Today, aforesaid civil application no. 1551 of 2003 was listed before this court with the main mater. However, at the time of submissions, both the advocates have jointly requested to decide the main matter. Therefore, considering their joint request, main matter i.e. present petition was taken up for hearing today itself.

Rule. Service of rule is waived by the learned AGP Mr. N.D. Gohil on behalf of the respondents. In the facts and circumstances of the case and with the consent of the learned advocates for the parties, this petition is taken up for final hearing today itself.

In this petition, it is the case of the petitioner that as per the order dated 6th February, 2001 which is at page 38, passed by the Director, the petitioner has been given deemed date of 6th March, 1973 for promotion on the post of senior clerk The petitioner has raised the grievance that the Director has passed order on 5/7th January, 2002 wherein the seniority of the petitioner in the cadre of senior clerk has been changed from 6th March, 1973 to 8th June, 1974 and as a consequence thereof, he has been placed in the provisional seniority list of senior clerk from No. 78 to No. 99A.

During the course of hearing, learned advocate Mr. Majmudar has submitted that once the order has been passed on 6.2.2001 page 38 fixing deemed date in favour of the petitioner 6th March, 1973, before changing his seniority from that date by passing the order dated 5/7th January, 2002, the Director ought to have given reasonable opportunity of hearing to the petitioner as the order is adversely affecting the civil rights of the petitioner and is also affecting his prestige in the employment. He submitted that the said order was passed by the respondent Director without giving any opportunity of hearing to the petitioner and, therefore, it is contrary to the principles of natural justice. He submitted that it is a settled law laid down time and again by this court and also by the apex court that in case if any order adverse to the employee is required to

be passed in the State Authority which is having adverse effect on the employee affecting his prestige in the employment, same should be passed after affording reasonable opportunity of hearing and in this case, the respondents have not afforded any opportunity and, therefore, the order is violative of the principles of natural justice. It was, therefore, his submission that the said order is required to be quashed and set aside on that ground alone while reserving liberty in favour of the respondents to pass appropriate order in accordance with law after affording reasonable opportunity to the petitioner.

On the other hand, learned AGP Mr. N.D.Gohil appearing for the respondents has submitted that from the record, it is not becoming clear as to whether the petitioner has been given any opportunity or not before passing the order dated 5/7th January, 2002 altering the seniority of the petitioner pursuant to the representation made by other employees.

I have considered the submissions made by the learned advocates for the parties. From the record, it is not becoming clear that any opportunity whatsoever has been given to the petitioner before altering his seniority pursuant to the representation made by the other employees. Under the order dated 5/7th January, 2002, seniority of the petitioner has been altered while considering the representation made by the other employees against the deemed date of promotion given to the petitioner. Since the petitioner has not been heard in any manner whatsoever before passing such order altering his seniority, I am of the view that the order in question is violative of the principles of natural justice. Therefore, considering that fact, when any order is required to be passed by the State Authority which is having adverse effect on the salary of an employee or is adversely affecting the prestige and status of an employee, it is necessary for the State Authority to hear the person who is likely to be affected by such an order before passing such order for enabling him to say as to why such an order should not be passed. Since that has not been done, the order in question is required to be quashed and set aside on that ground alone without expressing any opinion about the merits of the other aspects of the matter.

Recently, in the matter of BHUPINDER PAL SINGH VERSUS DIRECTOR GENERAL OF CIVIL AVIATION & OTHERS reported in 2003-II-LLJ page 1032 [August,2003 Issue],

the question has been examined by the apex court that in case when any adverse orders are required to be passed against any person having adverse civil consequences against the person and it is also affecting his status and prestige in the employment, then, before passing such adverse order, principles of natural justice must have to be followed, otherwise, order is not sustainable as being in violation of the principles of natural justice. In para 3 of the said decision, it has been observed by the Hon'ble apex court as under:

> " Looking to the assertion made by the appellant that no opportunity was given to him during the investigation or inquiry based on which the order was passed on July 21, 1999 adversely affecting his rights and status in the absence of any counter affidavit denying the same either before the High Court or before this Court, there is no impediment or difficulty in holding that the order dated July 21, 1999 was passed in violation of the principles of natural justice. Even a perusal of the impugned order indicates that no opportunity was given to the appellant. The High Court proceeded on wrong assumption that the second inquiry was not a de novo inquiry. It appears to us that no opportunity was given to the appellant either during the inquiry made for the first time or in the second inquiry. Since the order passed is in clear violation of principles of natural justice, it is unnecessary for us to go into the merits of the other contentions raised. In the normal course, we would have set aside the order giving liberty to the respondent to hold a fresh inquiry. Since the appellant has superannuated and at this length of time, we think it is neither appropriate nor desirable to direct a fresh inquiry."

Therefore, considering the facts and circumstances of the present case and also considering the law laid down by the apex court very recently as aforesaid, this petition is required to be allowed.

In the result, this petition is allowed. The order passed by the Director, Medical Services, ESI Scheme dated 5/7th January, 2002 is hereby quashed and set aside with a liberty in favour of the respondents to pass appropriate order in accordance with law in that regard only after affording reasonable and proper opportunity of hearing to the petitioner within three

months from the date of receipt of copy of this order. The promotions, if any, given in the mean time by the respondents shall be subject to the ultimate out come of the order that may be passed by the Director, Medical Services, ESI Scheme pursuant to these directions issued by this court. Rule is made absolute in terms indicated hereinabove with no order as to costs. There shall be no order as to costs.

In view of the aforesaid order passed by this Court in the main matter, aforesaid civil applications shall not survive and therefore, same are disposed of as not surviving.

(H.K. Rathod,J.)

Vyas